

Maritime Administration, DOT

§ 298.18

the Secretary's analysis of the following three elements:

(i) Conformity of the company's projections with supply and demand analyses prepared by the Maritime Administration;

(ii) Availability of charters, letters of intent, outstanding contractual commitments, contracts of affreightment, transportation agreements or similar agreements or undertakings; and

(iii) The applicant's existing market share compared with the market share necessary to meet projected revenues.

(2) A projected cash flow and net income, supported by the findings of paragraph (b)(1) of this section, that is sufficient to meet the projected Title XI debt service requirements and any other debt obligations of the company.

§ 298.15 Investigation fee.

(a) *In general.* Prior to the issuance of the Letter Commitment the applicant shall pay an Investigation Fee, computed as hereinafter provided, to the Secretary in the amount stated in the Letter Commitment. This fee is imposed to pay for the investigation of the project described in the application and the participants in the project, the appraisal of properties offered as security, Vessel inspection during construction, reconstruction or reconditioning (where applicable) and other administrative expenses. If, for any reason, the Secretary shall subsequently disapprove the application, one-half of the Investigation Fees shall be due and payable.

(b) *Base Fee.* The investigation fee shall be one-half of one percent on obligations to be issued up to and including \$10,000,000 and $\frac{1}{8}$ of one percent on all obligations to be issued in excess of \$10,000,000. The \$1,000 filing fee previously paid upon filing the original application (described in § 298.3 of this part) shall be credited against the investigation fee.

§ 298.16 Substitution of participants.

(a) Application may be made to the Maritime Administration for permission to substitute participants to a Mortgage and/or Security Agreement in a financing that is receiving assistance authorized by Title XI of the Act, both prior and subsequent to amend-

ment by Pub. L. 92-507. A non-refundable fee shall be imposed, payable at the time of application. This fee shall be in addition to the Annual Guarantee Fee or annual premium charge for Mortgage insurance, whichever is applicable.

(b) A \$3,000 fee shall be required to defray all costs of processing and reviewing a joint application by a mortgagor and/or Obligor and a proposed transferee of a Vessel or Advanced or Modern Shipbuilding Technology, which is security for Title XI debt, if the proposed transferee is to assume the Mortgage and/or the Security Agreement.

§ 298.17 Evaluation of applications.

(a) In evaluating project applications, the Secretary shall also consider whether the application provides for:

(1) The capability of the Vessel(s) serving as a naval and military auxiliary in time of war or national emergency.

(2) The financing of the Vessel(s) within one year after delivery.

(3) The acquisition of Vessel(s) currently financed under Title XI by assumption of the total obligation(s).

(4) The Guarantees extend for less than the normal term for that class of vessel.

(5) In the case of an Eligible Shipyard, the capability of the shipyard to engage in naval vessel construction in time of war or national emergency.

(6) In the case of Advanced or Modern Shipbuilding Technology, the Guarantees extend for less than the technological life of the asset.

(b) In determining the amount of equity which must be provided by the applicant, the Secretary shall consider, among other things, the following:

(1) The financial strength of the company;

(2) Adequacy of collateral; and

(3) The term of the Guarantees.

§ 298.18 Financing Advanced or Modern Shipbuilding Technology.

(a) *Initial criteria.* The Secretary may approve Guarantees issued to finance Advanced or Modern Shipbuilding Technology at a General Shipyard Facility. The Secretary will approve such Guarantees after consideration of the

following factors: whether the Guarantees will aid in the transition from naval shipbuilding to commercial ship construction for domestic and export sales, will encourage shipyard modernization, and/or will support increased productivity. The applicant shall provide a detailed statement with the Guarantee application which will provide the basis for such consideration by the Secretary.

(b) *Other conditions.* Applications for loan guarantees under this section shall not be approved unless the Secretary determines that the following requirements have been met:

(1) The term for such Guarantees will not exceed the reasonable economic useful life of the collective assets which comprise this technology, as determined by the Secretary;

(2) There is sufficient collateral to secure the Guarantee; and

(3) Approval of the application will not preclude approval of any other pending application for Advanced or Modern Shipbuilding Technology Guarantees which, in the sole opinion of the Secretary, would result in a more desirable use of appropriated funds. The Secretary's opinion will take into consideration such factors as the types of vessels which will be built by the shipyard, the productivity increases which will be achieved, the geographic location of the shipyard, the long-term viability of the shipyard, the soundness of the financial transaction, any financial impact on other Title XI transactions, and the furtherance of the goals of the Shipbuilding Act.

§ 298.19 Financing Eligible Export Vessels.

(a) *Transmittal to Secretary of Defense.* Upon receiving an application for a loan Guarantee for an Eligible Export Vessel, the Secretary shall promptly provide to the Secretary of Defense notice of the receipt of the application. During the 30-day period beginning on the date on which the Secretary of Defense receives such notice, the Secretary of Defense may disapprove the loan guarantee based on the assessment of the Secretary of Defense of the potential use of the Vessel in a manner that may cause harm to United States national security interests. The Sec-

retary of Defense may not disapprove a loan Guarantee under this section solely on the basis of the type of vessel to be constructed with the loan Guarantee. The authority of the Secretary of Defense to disapprove a loan Guarantee under this section may not be delegated to any official other than a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate. The Secretary of Transportation may not make a loan guarantee disapproved by the Secretary of Defense.

(b) *Determinations by the Secretary.* (1) If the loan Guarantee commitment cost of any such Vessel is made available from funds transferred from the Secretary of Defense pursuant to section 108 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160, 107 Stat. 1547), the Vessel must be of at least 5,000 gross tons and found by the Secretary to be commercially marketable on the international market. Vessels of less than 5,000 gross tons can receive Guarantees with funds appropriated to the Department of Transportation.

(2) Such Guarantees shall not be approved unless:

(i) The Secretary finds that the construction, reconstruction or reconditioning of the Vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency; and

(ii) The owner of the Vessel agrees with the Secretary that the Vessel shall not be transferred to any country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

(3) The Secretary may approve Guarantees issued to finance Eligible Export Vessels. Such Guarantee shall not be approved unless the Secretary determines that the countries in which the shipowner, its charterers, guarantors, or other financial interests supporting the transaction, if any, have their chief executive offices or have located a substantial portion of their assets, present an acceptable financial or legal risk to